

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

WP(C).No. 6693 of 2007(V)

PETITIONER:

**R.R. HOLIDAY HOMES (P) LTD.,
HAVING ITS REGISTERED OFFICE AT KARTHIKEYAM,
BEACH P.O., SANKHUMUGHAM, THIRUVANANTHAPURAM,
REPRESENTED BY ITS MANAGING DIRECTOR,
SHRI.S. RAJASEKHARAN NAIR, AGED 49,
S/O.SREEDHARAN NAIR.**

BY ADV. SRI.K.B.PRADEEP

RESPONDENTS:

- 1. THE STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE SECRETARY, DEPARTSMENT OF LOCAL
ADMINISTRATION, THIRUVANANTHAPURAM.**
- 3. THE DISTRICT COLLECTOR,
THIRUVANANTHAPURAM.**
- 4. THE ADDITIONAL TAHSILDAR,
NEYATTINKARA.**

BY GOVERNMENT PLEADER SRI.D.ANILKUMAR

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: COPY OF THE JUDGMENT DTD. 29/11/2003 IN O.S.NO.894/1998 OF THE MUNSIFF'S COURT, NEYYATTINKARA.**
- EXT.P2: COPY OF THE NOTICE DTD. NIL ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.**
- EXT.P3: COPY OF THE REPLY DTD. 31/07/2006 GIVEN BY THE PETITIONER TO EXT.P2 NOTICE.**
- EXT.P4: COPY OF THE LETTER DTD. 31/07/2006 SENT BY THE PETITIONER TO THE VILLAGE OFFICER.**
- EXT.P5(A), (B),(C)&(D):PHOTOGRAPHS OF THE PROPERTY.**
- EXT.P6: COPY OF THE REPORT DTD. 18/12/1998 OF THE VILLAGE OFFICER, VIZHINJAM COUNTERSIGNED BY THE TAHSILDAR, NEYYATTINKARA.**
- EXT.P7: COPY OF THE APPROVED PLAN FOR THE COMPOUND WALL ISSUED BY THE VIZHINJAM PANCHAYAT.**
- EXT.P8; COPY OF THE CERTIFICATE DTD. 5/10/2002 ISSUED BY THE VILLAGE OFFICER, VIZHINJAM.**

1ST RESPONDENT'S EXHIBITS:

- EXT.R1(A): COPY OF THE FORM B NOTICE.**
- EXT.R1(B); COPY OF THE ORDER DTD. 20/07/06.**
- EXT.R1(C): COPY OF THE RELEVANT PAGE OF THE BASIC TAX REGISTER.**

/TRUE COPY/

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THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No. 6693 OF 2007-V

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Dated this the 14th day of March, 2007.

JUDGMENT

This writ petition is filed challenging proceedings on the basis of which the petitioner is alleged to have been deprived of possession of a parcel of land.

2. It is the admitted situation that Ext.P2 C Form in Rule 11 of the Kerala Land Conservancy Rules was served on the petitioner some time in July, 2006. Petitioner made Exts.P3 and P4 replies to that. Whatever that be, the legal incidence flowing out of the service of a notice in C Form under Rule 11 of the Kerala Land Conservancy Rules is a matter which any citizen can understand by a mere advertence to the relevant law. Obviously, C Form notice is issued only after final order is issued under Rule 11 of the

Land Conservancy Rules. It has to be issued after a pre-decisional notice under Rule 9 and an opportunity of being heard. This writ petition is filed on 27-2-2007 alleging that the petitioner was dispossessed and there was a demolition of some other structures on 24-2-2007.

3. The respondents have filed a counter-affidavit placing, among other things, Ext.R1(a) which is stated to be a copy of the B form notice, including an acknowledgment by some person which the petitioner refutes as attributable to him. Also produced is Ext.R1(b) which is shown to be a manuscript order without showing the designation of the officer who has signed it. The relevant provisions of the Land Conservancy Act and Rules require the officer to write down the order in his own hand. Therefore, the mere fact that it is a manuscript order would not make any difference. But the fact remains that Ext.R1(b) does not disclose the designation of the person who has signed that document. This is relevant because under Section 15 of the Land Conservancy Act, the power of the Collector is to be exercised by him or any officer authorised by the Government.

Therefore, the identity of the officer is relevant. I also find that even though the said order is captioned as having been issued from the Taluk Office, Neyyattinkara, it cannot be taken as having been signed by the Additional Tahsildar, Neyyattinkara, if the signature in Ext.P2 is that of the Additional Tahsildar, Neyyattinkara. There is considerable difference between the signatures occurring in Ext.P2 and Ext.R1(b).

4. The learned counsel for the petitioner points out that even according to the respondents, there are controversies even relating to the survey numbers and that Ext.P1 would show that ITDC and the Union Government had claimed right over the very same property in question.

5. Whatever that be, since Ext.P2 was issued in July, 2006, I am not persuaded to issue any writ retrieving the situation created by the action taken against the petitioner on 24-2-2007. In my considered view, the discretion has to be exercised relegating the petitioner to the statutory remedy by way of appeal available under Section 16 of the Land

Conservancy Act.

In the aforesaid circumstances, without expressing anything on merits, this writ petition is disposed of directing that if the petitioner files appeal before the competent appellate authority within a week from now, such appeal shall be taken up, considered and disposed of in accordance with law, after affording the petitioner an opportunity of being heard. The appellate authority shall also advert to the relevancy, if any, of Ext.P1 judgment. At any rate, a final decision shall be taken in the appeal within a period of three weeks from the date of receipt of a copy of this judgment or the appeal as aforesaid, whichever is later. It is also directed that if the petitioner seeks any interlocutory order before the Revenue Divisional Officer regarding preservation of the property since the land of the petitioner is a hotel premises, the appellate authority will consider passing such interlocutory order as may be found just and convenient to ensure the rights of parties. If any interlocutory application is filed, a decision shall be rendered thereon within two days therefrom. It is also clarified that the petitioner will be at liberty to produce further

materials before the appellate authority to justify his claim. All other questions are left open.

**THOTTATHIL B. RADHAKRISHNAN,
JUDGE.**

Sha/-